

(f) A, son of B, a Hindu, becomes a Christian. After the conversion of A, another son C is born to B. C will have the same rights in respect of ancestral property as he would have had if A had remained a Hindu; but the birth of C will not otherwise affect the rights of A under section 2 of this Act.

MIRZA M. ISMAIL,

Dewan.

*Order No. P. 454—Legis. 9-38-1, dated Bangalore,
20th July 1938.*

Ordered that the accompanying Acts to amend the Transfer of Property Act and to supplement that Act which received the assent of His Highness the Maharaja, on the thirteenth day of July 1938, be published as Acts No. XVI and No. XVII of 1938, in the *Mysore Gazette*, for general information.

M. VENKATESA IYENGAR,

Secretary to Government,

General Department.

ACT No. XVI OF 1938.

*(Received the assent of His Highness the Maharaja on the
thirteenth day of July 1938.)*

An Act to amend the Transfer of Property Act for certain purposes.

Whereas it is expedient to amend the Transfer of Property Act, 1918, for the purposes hereinafter appearing; it is hereby enacted as follows:—

1. (1) This Act may be called the Transfer of Property (Amendment) Act, 1938.

Short title
and com-
mencement.

(2) It shall come into force on the first day of January 1939.

2. In section 3 of the Transfer of Property Act (hereinafter referred to as the said Act), for the last

Amendment
of section 3.

325
~~32~~ ~~324~~

paragraph containing the definition of "notice," the following shall be substituted, namely:—

"a person is said to have notice" of a fact when he actually knows that fact, or when, but for wilful abstention from an enquiry or search which he ought to have made, or gross negligence, he would have known it.

Explanation I.—Where any transaction relating to immovable property is required by law to be and has been effected by a registered instrument, any person acquiring such property or any part of or share or interest in, such property shall be deemed to have notice of such instrument as from the date of registration or, if the instrument has been registered under sub-section (2) of section 30 of the Mysore Registration Act, 1903, from the earliest date on which a memorandum thereof has been filed by any Sub-Registrar under section 66 of that Act:

Provided that—

(1) the instrument has been registered and its registration completed in the manner prescribed by the Mysore Registration Act, 1903, and the rules made thereunder,

(2) the instrument has been duly entered or filed, as the case may be, in the books kept under section 51 of that Act, and

(3) the particulars regarding the transaction to which the instrument relates have been correctly entered in the indexes kept under section 55 of that Act.

Explanation II.—Any person acquiring any immovable property or any share or interest in any such property shall be deemed to have notice of the title, if any, of any person who is for the time being in actual possession thereof.

Explanation III.—A person shall be deemed to have had notice of any fact if his agent acquires notice thereof whilst acting on his behalf in the course of business to which that fact is material:

Provided that, if the agent fraudulently conceals the fact, the principal shall not be charged with notice thereof as against any person who was a party to or otherwise cognizant of the fraud."

Amendment
of section 5.

3. In section 5 of the said Act, after the words "or to himself" the words "or to himself" shall be inserted; and to the same section the following paragraph shall be added, namely:

"In this section 'living person' includes a company or association or body of individuals, whether incorporated or not, but nothing herein contained shall affect any law for the time being in force relating to transfer of property to or by companies, associations or bodies of individuals."

4. In section 6 of the said Act, after clause (d) the following clause shall be inserted, namely :—

Amendment of section 6.

"(dd) A right to future maintenance, in whatsoever manner arising, secured for determined, cannot be transferred."

5. For the second paragraph of section 11 of the said Act, beginning with the words "Nothing in this section" and ending with the words "in a particular manner" the following shall be substituted, namely :—

Amendment of section 11.

"Where any such direction has been made in respect of one piece of immovable property for the purpose of securing the beneficial enjoyment of another piece of such property, nothing in this section shall be deemed to affect any right which the transferor may have to enforce such direction or any remedy which he may have in respect of a breach thereof."

6. In section 15 of the said Act, for the words "as regards the whole class," the following words shall be substituted, namely :—

Amendment of section 15.

"in regard to those persons only and not in regard to the whole class."

7. For sections 16, 17 and 18 of the said Act, the following sections shall be substituted, namely :—

Substitution of new sections for sections 16, 17 and 18.

"16. Where by reason of any of the rules contained in sections 13 and 14, an interest created for the benefit of a person or of a class of persons fails in regard to such person or the whole of such class, any interest created in the same transaction and intended to take effect after or upon failure of such prior interest also fails.

Transfer to take effect on failure of prior interest.

"17. (1) Where the terms of a transfer of property direct that the income arising from the property shall be accumulated either wholly or in part during a period longer than—

Direction for accumulation.

(a) the life of the transferor, or

(b) a period of eighteen years from the date of the transfer,

such direction shall, save as hereinafter provided, be void to the extent to which the period during which the accumulation is directed exceeds the longer of the aforesaid periods, and at the end of such last-mentioned period the property and the income thereof shall be disposed of as if the period during which the accumulation has been directed to be made had elapsed.

(2) This section shall not affect any direction for accumulation for the purpose of—

- (i) the payment of the debts of the transferor or any other person taking any interest under the transfer, or
- (ii) the provision of portions for children or remoter issue of the transferor or of any other person taking any interest under the transfer, or
- (iii) the preservation or maintenance of the property transferred;

and such direction may be made accordingly.

Transfer in
perpetuity for
benefit of
public.

“ 18. The restrictions in sections 14, 16 and 17 shall not apply in the case of a transfer of property for the benefit of the public in the advancement of religion, knowledge, commerce, health, safety, or any other object beneficial to mankind.”

Amendment
of section 39.

8. In section 39 of the said Act—

- (a) the words “with the intention of defeating such right” shall be omitted, and for the words “of such intention” the word “thereof” shall be substituted; and
- (b) the *illustration* shall be omitted.

Amendment
of section 40.

9. In section 40 of the said Act for the words “of the latter property or to compel its enjoyment in a particular manner,” the words “in a particular manner of the latter property” shall be substituted.

Amendment
of section 43.

10. In section 43 of the said Act, after the word “person” the words “fraudulently or” shall be inserted.

Amendment
of section 52.

11. (1) In section 52 of the said Act—

- (a) for the words “active prosecution” the word “pendency” shall be substituted;
- (b) for the words “a contentious” the word “any” shall be substituted; and
- (c) after the words “suit or proceeding,” where they occur for the first time, the words “which is not collusive and” shall be inserted.

(2) To the same section the following *Explanation* shall be added, namely:—

“*Explanation.*—For the purposes of this section, the pendency of a suit or proceeding shall be deemed to commence from the date of the presentation of the plaint or the institution of the proceeding in a Court of competent jurisdiction, and to continue until the suit or proceeding has been disposed of by a final decree or order and complete satisfaction or discharge of such decree or order has been obtained, or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force.”

12. For section 53 of the said Act, the following section shall be substituted, namely:—

Substitution
of new section
for section 53.
Fraudulent
transfer.

“53. (1) Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be voidable at the option of any creditor so defeated or delayed.

Nothing in this sub-section shall impair the rights of a transferee in good faith and for consideration.

Nothing in this sub-section shall affect any law for the time being in force relating to insolvency.

A suit instituted by a creditor (which term includes a decree-holder whether he has or has not applied for execution of his decree) to avoid a transfer on the ground that it has been made with intent to defeat or delay the creditors of the transferor, shall be instituted on behalf of, or for the benefit of, all the creditors.

(2) Every transfer of immovable property made without consideration with intent to defraud a subsequent transferee shall be voidable at the option of such transferee.

For the purposes of this sub-section, no transfer made without consideration shall be deemed to have been made with intent to defraud by reason only that a subsequent transfer for consideration was made.”

13. After section 53 of the said Act, the following section shall be inserted, namely:—

Insertion of
new section
53-A.

“53-A. Where any person contracts to transfer for consideration any immovable property by writing signed by him or on his behalf from which the terms necessary to constitute the transfer can be ascertained with reasonable certainty,

Part
performance.

and the transferee has, in part performance of the contract, taken possession of the property or any part thereof; or the transferee being already in possession, continues in possession in part performance of the contract and has done some act in furtherance of the contract,

and the transferee has performed or is willing to perform his part of the contract,

then, notwithstanding that the contract, though required to be registered, has not been registered, or, where there is an instrument of transfer, that the transfer has not been completed in the manner prescribed therefor by the law for the time being in force, the transferor or any person claiming under him shall be debarred from enforcing against the transferee and persons claiming under him any right in respect of the property of which the transferee has taken or continued in possession, other than a right expressly provided by the terms of the contract:

Provided that nothing in this section shall affect the rights of a transferee for consideration who has no notice of the contract or of the part performance thereof."

Amendment
of section 55.

14. In section 55 of the said Act—

(a) in sub-clause (a) of clause (1), after the word "property" the words "or in the seller's title thereto" shall be inserted;

(b) in sub-clause (b) of clause (4), after the word "buyer," where it occurs for the second time, the words "any transferee without consideration or any transferee with notice of the non-payment," shall be inserted; and after the words "on such amount or part" the words "from the date on which possession has been delivered" shall be added; and

(c) in sub-clause (b) of clause (6), the words "with notice of the payment" shall be omitted.

Substitution
of new section
for section 56.

Marshalling
by subsequent
purchaser.

15. For section 56 of the said Act, the following shall be substituted, namely:—

"56. If the owner of two or more properties mortgages them to one person and then sells one or more of the properties to another person, the buyer is, in the absence of a contract to the contrary, entitled to have the mortgage-debt satisfied out of the property or properties not sold to him, so far as the same will extend, but not so as to prejudice the rights of the mortgagee or persons

claiming under him or of any other person who has for consideration acquired an interest in any of the properties."

16. In section 58 of the said Act, (a) to clause (c) the following proviso shall be added, namely:— Amendment of section 58.

"Provided that no such transaction shall be deemed to be a mortgage, unless the condition is embodied in the document which effects or purports to effect the sale;"

(b) in clause (d)—

(i) after the words "Where the mortgagor delivers possession" the words "or expressly or by implication binds himself to deliver possession" shall be inserted;

(ii) for the words "and to appropriate them" the words "or any part of such rents and profits and to appropriate the same" shall be substituted; and

(iii) after the words "or partly in lieu of interest," for the word "and" the word "or" shall be substituted; and

(c) after clause (e) the following clauses shall be added, namely:—

"(f) The transaction is called a mortgage by deposit of title-deeds where a person, in any area to which this provision may be extended by the Government by notification in the official Gazette, delivers to a Bank or its authorized agent documents of title relating to immovable property with intent to create a security thereon and accompanied by a memorandum in writing signed by the debtor specifying such property and the amount of credit given or agreed to be given by the Bank on the security of such property, provided that a copy of such memorandum under the seal of the Bank and the signature of its authorized agent is delivered or transmitted by registered post within ten days of the delivery to the Bank as aforesaid of the memorandum, to every registering officer within whose district or sub-district the whole or any portion of such property is situated, or where a special registering officer is appointed or designated by Government in this behalf, to such registering officer, and such registering

Mortgage by deposit of title-deeds.

officer shall thereupon file the copy in his Book No. 1.

Explanation.—‘Bank’ in this clause means an association or company formed principally for the purpose of engaging on the business of banking and registered under the provisions of the law relating to Companies for the time being in force in Mysore, or in the United Kingdom or in any of the Colonies or Dependencies thereof, or in British India or in any other Indian States which may be notified by the Government in the official Gazette in this behalf or incorporated by an Act of Parliament or of the Central Legislature or of a Provincial Legislature in India or by Royal Charter or Letters Patent.”

Anomalous mortgage.

“(g) A mortgage which is not a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage, an English mortgage or a mortgage by deposit of title-deeds within the meaning of this section is called an anomalous mortgage.”

Amendment of section 59.

17. In section 59 of the said Act—

(a) after the words “a mortgage” the words “other than a mortgage by deposit of title-deeds” shall be inserted and

(b) the second paragraph and the *Explanation* shall be omitted.

Insertion of new section 59-A.

References to mortgagors and mortgagees to include persons deriving title from them.

18. After section 59 of the said Act, the following section shall be inserted, namely:—

“59-A. Unless otherwise expressly provided, reference in this Chapter to mortgagors and mortgagees shall be deemed to include references to persons deriving title from them respectively.”

Amendment of section 60.

19. In section 60 of the said Act,

(a) for the word “payable” the word “due” shall be substituted;

(b) for the words “the mortgage-deed, if any, to the mortgagor” the following words shall be substituted, namely:—

“to the mortgagor the mortgage-deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee;”

(c) for the word “order” the word “decree” shall be substituted; and

(d) after the words "remaining due on the mortgage, except" the word "only" shall be inserted.

20. After section 60 of the said Act, the following sections shall be inserted, namely :—

Insertion of
new sections
60-A and 60-B.

"60-A. (1) Where a mortgagor is entitled to redemption, then, on the fulfilment of any conditions on the fulfilment of which he would be entitled to require a re-transfer, he may require the mortgagee, instead of re-transferring the property, to assign the mortgage-debt and transfer the mortgaged property to such third person as the mortgagor may direct; and the mortgagee shall be bound to assign and transfer accordingly.

Obligation to
transfer to
third party
instead of re-
transference
to mortgagor.

(2) The rights conferred by this section belong to and may be enforced by the mortgagor or by any encumbrancer notwithstanding an intermediate encumbrance; but the requisition of any encumbrancer shall prevail over a requisition of the mortgagor and, as between encumbrancers, the requisition of a prior encumbrancer shall prevail over that of a subsequent encumbrancer.

(3) The provisions of this section do not apply in the case of a mortgagee who is or has been in possession.

60-B. A mortgagor, as long as his right of redemption subsists, shall be entitled at all reasonable times, at his request and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of, or extracts from, documents of title relating to the mortgaged property which are in the custody or power of the mortgagee."

Right to in-
spection and
production of
documents.

21. For section 61 of the said Act the following section shall be substituted, namely :—

Substitution
of new section
for section 61.

"61. A mortgagor who has executed two or more mortgages in favour of the same mortgagee shall, in the absence of a contract to the contrary when the principal money of any two or more of the mortgages has become due, be entitled to redeem any one such mortgage separately, or any two or more of such mortgages together."

Right to
redeem
separately or
simulta-
neously.

22. In section 62 of the said Act—

(a) after the word "property," where it first occurs, the words "together with the mortgage deed and all documents relating to the mortgaged property which are in the possession or power of the mortgagee" shall be inserted;

Amendment
of section 62.

(b) for the words "the interest of the principal money" the words "or any part thereof a part only of the mortgage money," shall be substituted; and

(c) for the words "the principal money" where they occur for the second time, the words "the mortgage-money or the balance thereof" shall be substituted.

Amendment
of section 63.

23. In section 63 of the said Act for the words "at the same rate of interest" the words "with interest at the same rate as is payable on the principal, or, where no such rate is fixed at the rate of nine per cent per annum" shall be substituted.

Insertion of
new section
63-A.

24. After section 63 of the said Act, the following section shall be inserted, namely:—

Improve-
ments to
mortgaged
property.

"63-A. (1) Where mortgaged property in possession of the mortgagee has, during the continuance of the mortgage, been improved, the mortgagor, upon redemption, shall, in the absence of a contract to the contrary, be entitled to the improvement; and the mortgagor shall not, save only in cases provided for in sub-section (2), be liable to pay the cost thereof.

(2) Where any such improvement was effected at the cost of the mortgagee and was necessary to preserve the property from destruction or deterioration or was necessary to prevent the security from becoming insufficient, or was made in compliance with the lawful order of any public servant or public authority, the mortgagor shall, in the absence of a contract to the contrary, be liable to pay the proper cost thereof as an addition to the principal money with interest at the same rate as is payable on the principal, or where no such rate is fixed, at the rate of nine per cent per annum, and the profits, if any, accruing by reason of the improvement shall be credited to the mortgagor.

(3) Notwithstanding anything in sub-section (1) a mortgagee may remove at any time whilst he is in possession of the property mortgaged, but not afterwards, all things which he has attached to the earth, provided he leaves the property in the state in which he received it."

Amendment
of section 64.

25. In section 64 of the said Act, the words "for a term of years" shall be omitted.

Amendment
of section 65.

26. In section 65 of the said Act.—

(a) in clause (d), the words "for a term of years" shall be omitted; and

334

(b) the words "Nothing in clause (c), or in clause (d), so far as it relates to the payment of future rent, applies in the case of an usufructuary mortgage" shall be omitted.

27. After section 65 of the said Act, the following section shall be inserted, namely:—

Insertion of
new section
65-A.

"65-A. (1) Subject to the provisions of sub-section (2), a mortgagor, while lawfully in possession of the mortgaged property, shall have power to make leases thereof which shall be binding on the mortgagee.

Mortgagor's
power to
lease.

(2) (a) Every such lease shall be such as would be made in the ordinary course of management of the property concerned, and in accordance with any local law, custom or usage.

(b) Every such lease shall reserve the best rent that can reasonably be obtained, and no premium shall be paid or promised and no rent shall be payable in advance.

(c) No such lease shall contain a covenant for renewal.

(d) Every such lease shall take effect from a date not later than six months from the date on which it is made.

(e) In the case of a lease of buildings, whether leased with or without the land on which they stand, the duration of the lease shall in no case exceed three years and the lease shall contain a covenant for payment of the rent and a condition of re-entry on the rent not being paid within a time therein specified.

(3) The provisions of sub-section (1) apply only if and as far as a contrary intention is not expressed in the mortgage-deed; and the provisions of sub-section (2) may be varied or extended by the mortgage-deed, and as so varied and extended, shall, as far as may be, operate in like manner and with all like incidents, effects and consequences, as if such variations or extensions were contained in that sub-section."

28. In section 67 of the said Act—

Amendment
of section 67.

(a) for the word "payable" the word "due" shall be substituted;

(b) for the words "an order," wherever they occur, the words "a decree" shall be substituted; and

(c) In clause (a) for the words "a simple mortgage as such" the following words shall be substituted, viz., "any mortgagee, other than a mortgagee by conditional

sale or a mortgagee under an anomalous mortgage by the terms of which he is entitled to foreclose."

Insertion of
new section
67-A.

29. After section 67 of the said Act, the following section shall be inserted, namely:—

Mortgagee
when bound
to bring one
suit on several
mortgages.

"67-A. A mortgagee who holds two or more mortgages executed by the same mortgagor in respect of each of which he has a right to obtain the same kind of decree under section 67, and who sues to obtain such decree on any one of the mortgages, shall, in the absence of a contract to the contrary, be bound to sue on all the mortgages in respect of which the mortgage money has become due."

Substitution
of new section
for section 68.

30. For section 68 of the said Act, the following section shall be substituted, namely:—

Right to sue
for mortgage
money.

"68. (1) The mortgagee has a right to sue for the mortgage money in the following cases and no others, namely:—

- (a) where the mortgagor binds himself to repay the same;
- (b) where, by any cause other than the wrongful act or default of the mortgagor or mortgagee, the mortgaged property is wholly or partially destroyed or the security is rendered insufficient within the meaning of section 66, and the mortgagee has given the mortgagor a reasonable opportunity of providing further security enough to render the whole security sufficient, and the mortgagor has failed to do so;
- (c) where the mortgagee is deprived of the whole or part of his security by or in consequence of the wrongful act or default of the mortgagor;
- (d) where the mortgagee being entitled to possession of the mortgaged property, the mortgagor fails to deliver the same to him, or to secure the possession thereof to him without disturbance by the mortgagor or any person claiming under a title superior to that of the mortgagor:

Provided that, in the case referred to in clause (a), a transferee from the mortgagor or from his legal representative shall not be liable to be sued for the mortgage money.

(2) Where a suit is brought under clause (a) or clause (b) of sub-section (1), the Court may, at its discre-

tion, stay the suit and all proceedings therein, notwithstanding any contract to the contrary, until the mortgagee has exhausted all his available remedies against the mortgaged property or what remains of it, unless the mortgagee abandons his security and, if necessary, re-transfers the mortgaged property."

31. In section 71 of the said Act, the words "for a term of years" shall be omitted. Amendment of section 71.

32. In section 72 of the said Act:—

Amendment of section 72.

(a) for the words "When, during the continuance of the mortgage, the mortgagee takes possession of the mortgaged property, he" the words "A mortgagee" shall be substituted.

(b) clause (a) shall be omitted;

(c) in clause (b), for the words "its preservation" the words "the preservation of the mortgaged property" shall be substituted;

(d) after the words "nine per cent per annum," the following Proviso shall be inserted, namely:—

"Provided that the expenditure of money by the mortgagee under clause (b) or clause (c) shall not be deemed to be necessary unless the mortgagor has been called upon and has failed to take proper and timely steps to preserve the property or to support the title." and

(e) for the words, "a charge on the mortgaged property, in addition to the principal money, with the same priority and with interest at the same rate" the following shall be substituted, namely:—

"added to the principal money with interest at the same rate as is payable on the principal money, or where no such rate is fixed, at the rate of nine per cent per annum."

33. For section 73 of the said Act, the following section shall be substituted, namely:— Substitution of new section for section 73.

"73. (1) Where the mortgaged property or any part thereof or any interest therein is sold owing to failure to pay arrears of revenue or other charges of a public nature or rent due in respect of such property, and such failure did not arise from any default of the mortgagee, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of any surplus Right to proceeds of revenue sale or compensation on acquisition.

of the sale proceeds remaining after payment of the arrears and of all charges and deductions directed by law.

(2) Where the mortgaged property or any part thereof or any interest therein is acquired under the Land Acquisition Act, 1894, or any other enactment for the time being in force, providing for the compulsory acquisition of immovable property, the mortgagee shall be entitled to claim payment of the mortgage-money, in whole or in part, out of the amount due to the mortgagor as compensation.

(3) Such claims shall prevail against all other claims except those of prior encumbrances, and may be enforced notwithstanding that the principal money on the mortgage has not become due."

Omission of
sections 74
and 75.
Amendment
of section 76.

34. Section 74 and section 75 of the Act shall be omitted.

35. In section 76 of the said Act:—

(a) in clause (c), after the words "charges of a public nature" the words "and all rent" shall be inserted;

(b) in clause (h), after the words "deducting the expenses" the words "properly incurred for the management of the property and the collection of rents and profits and the other expenses" shall be inserted, and the words "on the principal-money" shall be omitted; and

(c) in clause (i), the word "gross" shall be omitted;

Omission of
section 80.

36. Section 80 of the said Act shall be omitted.

Substitution
of new section
for section 81.

37. For sub-section (1) of section 81 of the said Act, the following section shall be substituted, namely:—

Marshalling
securities.

"81. (1) If the owner of two or more properties mortgages them to one person and then mortgages one or more of the properties to another person, the subsequent mortgagee is, in the absence of contract to the contrary, entitled to have the prior mortgage-debt satisfied out of the property or properties not mortgaged to him, so far as the same will extend, but not so as to prejudice the rights of the prior mortgagee or of any other person who has for consideration acquired an interest in any of the properties."

Amendment
of section 82.

38. In section 82 of the said Act:—

(a) for the first paragraph beginning with the words

“Where several properties,” and ending with the words “date of the mortgage” the following shall be substituted, namely :—

“Where property subject to a mortgage belongs to two or more persons having distinct and separate rights of ownership therein, the different shares in or parts of such property owned by such persons are, in the absence of a contract to the contrary, liable to contribute ratably to the debt secured by the mortgage, and, for the purpose of determining the rate at which each such share or part shall contribute, the value thereof shall be deemed to be its value at the date of the mortgage after deduction of the amount of any other mortgage or charge to which it may have been subject on that date” and

(b) in the third paragraph, for the word “second” the word “subsequent” shall be substituted.

39. In section 83 of the said Act :—

Amendment
of section 83.

(a) for the words “has become payable” the words “payable in respect of any mortgage has become due” shall be substituted;

(b) for the words “if then in his possession or power” the words “and all documents in his possession or power relating to the mortgaged property” shall be substituted;

(c) after the word “mortgage-deed,” where it occurs for the second time, the words “and all such other documents” shall be inserted; and

(d) the following paragraph shall be added after the words “such other person as aforesaid,” namely :—

“Where the mortgagee is in possession of the mortgaged property, the Court shall, before paying to him the amount so deposited, direct him to deliver possession thereof to the mortgagor and at the cost of the mortgagor either to retransfer the mortgaged property to the mortgagor or to such third person as the mortgagor may direct or to execute and (where the mortgage has been effected by a registered instrument) have registered an acknowledgment in writing that any right in derogation of the mortgagor's interest transferred to the mortgagee has been extinguished.”

Amendment
of section 84.

40. In section 84 of the said Act :—

- (a) after the words “from the date of the tender or” the words “in the case of a deposit, where no previous tender of such amount has been made,” shall be inserted;
- (b) for the words “as the case may be” the following shall be substituted, namely :—

“and the notice required by section 83 has been served on the mortgagee :

“Provided that, where the mortgagor has deposited such amount without having made a previous tender thereof and has subsequently withdrawn the same or any part thereof, interest on the principal money shall be payable from the date of such withdrawal ;” and

- (c) after the words “tender of the mortgage-money” the words “and such notice has not been given before the making of the tender or deposit, as the case may be” shall be added.

Substitution
of new section
for section 91.

41. For section 91 of the said Act the following section shall be substituted, namely :—

Persons who
may sue for
redemption.

“91. Besides the mortgagor, any of the following persons may redeem, or institute a suit for redemption of, the mortgaged property, namely :—

- (a) any person (other than the mortgagee of the interest sought to be redeemed) who has any interest in, or charge upon, the property mortgaged or in or upon the right to redeem the same ;
- (b) any surety for the payment of the mortgage-debt or any part thereof ; or
- (c) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property.”

Insertion of
new sections
92, 93 and 94.

42. After section 91 of the said Act, the following sections shall be inserted namely :—

Subrogation.

“92. Any of the persons referred to in section 91 (other than the mortgagor) and any co-mortgagor shall, on redeeming property subject to the mortgage, have, so far as regards redemption, foreclosure or sale of such property, the same rights as the mortgagee whose mortgage he redeems may have against the mortgagor or any other mortgagee.

The right conferred by this section is called the right of subrogation, and a person acquiring the same is said to be subrogated to the rights of the mortgagee whose mortgage he redeems.

A person who has advanced to a mortgagor money with which the mortgage has been redeemed shall be subrogated to the rights of the mortgagee whose mortgage has been redeemed, if the mortgagor has by a registered instrument agreed that such persons shall be subrogated.

Nothing in this section shall be deemed to confer a right of subrogation on any person unless the mortgage in respect of which the right is claimed has been redeemed in full.

93. No mortgagee paying off a prior mortgage, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his original security; and except in the case provided for by section 79, no mortgagee making a subsequent advance to the mortgagor, whether with or without notice of an intermediate mortgage, shall thereby acquire any priority in respect of his security for such subsequent advance.

Prohibition of tacking.

94. Where a property is mortgaged for successive debts to successive mortgagees, a mesne mortgagee has the same rights against mortgagees posterior to himself as he has against the mortgagor."

Rights of mesne mortgagee.

43. For section 95 of the said Act the following sections shall be substituted, namely:—

Substitution of new sections for section 95.

"95. Where one of several mortgagors redeems the mortgaged property, he shall, in enforcing his right of subrogation under section 92 against his co-mortgagors, be entitled to add to the mortgage-money recoverable from them such proportion of the expenses properly incurred in such redemption as is attributable to their share in the property.

Right of redeeming co-mortgagor to expenses.

96. The provisions hereinbefore contained which apply to a simple mortgage shall, so far as may be, apply to a mortgage by deposit of title-deeds."

Mortgage by deposit of title-deeds.

44. In section 98 of the said Act, for the words "a mortgage not being a simple mortgage, a mortgage by conditional sale, an usufructuary mortgage or an English mortgage or a combination of the first and third, or the second and third, of such forms," the words "an anomalous mortgage" shall be substituted.

Amendment of section 98.

Amendment
of section 100

45. In section 100 of the said Act,

(a) for the words "as to a mortgagor shall, so far as may be, apply to the owner of such property, and the provisions of sections 81 and 82 shall, so far as may be, apply to the person having such charge" the words "which apply to a simple mortgage shall, so far as may be, apply to such charge," shall be substituted; and

(b) after the words "in the execution of his trust" the following words shall be added, namely:—

"and save as otherwise expressly provided by any law for the time being in force, no charge shall be enforced against any property in the hands of a person to whom such property has been transferred for consideration and without notice of the charge."

Substitution
of new section
for section
101.

No merger in
case of subse-
quent encum-
brance.

46. For section 101 of the said Act, the following section shall be substituted, namely:—

"101. Any mortgagee of, or person having a charge upon immovable property, or any transferee from such mortgagee or charge-holder, may purchase or otherwise acquire the rights in the property of the mortgagor or owner, as the case may be, without thereby causing the mortgage or charge to be merged as between himself and any subsequent mortgagee of, or person having a subsequent charge upon, the same property; and no such subsequent mortgagee or charge-holder shall be entitled to foreclose or sell such property without redeeming the prior mortgage or charge, or otherwise than subject thereto."

Amendment
of section 102.

47. In section 102 of the said Act,

(a) for the words "Where the person or agent on whom such notice should be served cannot be found in the said district, or is unknown" the words "Where no person or agent on whom such notice should be served can be found or is known," shall be substituted;

(b) after the words "and any notice served in compliance with such direction shall be deemed sufficient" the following proviso shall be inserted, namely:—

"Provided that, in the case of a notice required by section 83, in the case of a deposit, the application shall be made to the Court in which the deposit has been made."

(c) for the words "Where the person or agent to whom such tender should be made cannot be found within the said district, or is unknown" the words "Where

no person or agent to whom such tender should be made can be found or is known," shall be substituted; and

(d) for the words "in such Court as last aforesaid" the words "in any Court in which a suit might be brought for redemption of the mortgaged property" shall be substituted.

48. In section 106 of the said Act, for the words "tendered or delivered either personally to the party who is intended to be bound by it," the following shall be substituted, namely:—

Amendment
of section 106.

"either be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party,"

49. In section 107 of the said Act, after the words "by delivery of possession," where they first occur, the following paragraph shall be inserted, namely:—

Amendment
of section 107.

"Where a lease of immovable property is made by a registered instrument, such instrument or, where there are more instruments than one, each such instrument shall be executed by both the lessor and the lessee."

50. In section 108 of the said Act.—

Amendment
of section 108.

(a) in clause (h)

(i) after the words "the lessee may" the words "even after the determination of the lease" shall be inserted; and

(ii) for the words "during the continuance of the lease," the words "whilst he is in possession of the property leased but not afterwards," shall be substituted; and

(b) in clause (o), after the words "or fell" the words "or sell" shall be inserted, and after the words "or damage buildings," the words "belonging to the lessor or" shall be inserted.

51. In clause (g) of section 111 of the said Act—

Amendment
of section 111.

(a) the words "or the lease shall become void" shall be omitted;

(b) after the words "title in himself" the following shall be inserted, namely:—

"or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event";

(c) for the words "either case" the words "any of these cases" shall be substituted; and

(d) for the words "does some act showing" the words "gives notice in writing to the lessee of" shall be substituted.

Insertion of
new section
114-A.

Relief against
forfeiture in
certain other
cases.

52. After section 114 of the said Act, the following section shall be inserted, namely :—

"114-A. Where a lease of immovable property has been determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach ;
and the lessee fails within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent."

Substitution
of new section
for section 119.

Right of party
deprived of
thing receiv-
ed in
exchange.

53. For section 119 of the said Act, the following section shall be substituted, namely :—

"119. If any party to an exchange or any person claiming through or under such party is by reason of any defect in the title of the other party deprived of the thing or any part of the thing received by him in exchange, then, unless a contrary intention appears from the terms of the exchange, such other party is liable to him or any person claiming through or under him for loss caused thereby, or at the option of the person so deprived, for the return of the thing transferred, if still in the possession of such other party or his legal representative or a transferee from him without consideration."

Amendment
of section 128.

54. In section 128 of the said Act, after the words "debts due by" the words "and liabilities of" shall be inserted.

Amendment
of section 130.

55. In section 130 of the said Act :—

after the words "The transfer of an actionable claim" the words "whether with or without consideration" shall be inserted.

344

56. Nothing in any of the following provisions of this Act namely sections 2, 6, 7, 12, 15, 16, 24, 27, clause (c) of section 28, sections 29, 30, 41, 47, 49, 51, 52, 53 and 55 shall be deemed in any way to affect—

Saving clause.

(a) the terms or incidents of any transfer of property made or effected before the first day of January 1939,

(b) the validity, invalidity, effect or consequences of anything already done or suffered before the aforesaid date,

(c) any right, title, obligation or liability already acquired, accrued or incurred before such date, or

(d) any remedy or proceeding in respect of such right, title, obligation or liability; and nothing in any other provision of this Act shall render invalid or in any way affect anything already done before the first day of January 1939 in any proceeding pending in a Court on that date; and any such remedy and any such proceeding as is herein referred to may be enforced, instituted or continued, as the case may be, as if this Act had not been passed.

MIRZA M. ISMAIL,

Dewan.

ACT No. XVII OF 1938.

*(Received the assent of His Highness the Maharaja
on the thirteenth day of July 1938.)*

**THE TRANSFER OF PROPERTY (AMENDMENT)
SUPPLEMENTARY ACT.**

**An Act to supplement the Transfer of Property (Amendment)
Act.**

Whereas by reason of the passing of the Transfer of Property (Amendment) Act, it is expedient that certain amendments should be made in certain other enactments; It is hereby enacted as follows:—

1. (1) This Act may be called the Transfer of Property (Amendment) Supplementary Act, 1938.

Short title and
commence-
ment.

(2) It shall come into force on the 1st day of January 1939.